



The Competitive Carriers Association

Rural Cellular Association

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Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: *In the Matter of Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-11497

Dear Ms. Dortch,

RCA—The Competitive Carriers Association (“RCA”) filed a petition for rulemaking on May 20, 2008,¹ to address serious competitive harms arising from the widespread use of exclusivity arrangements between the largest wireless carriers and device manufacturers. RCA remains convinced that device exclusivity arrangements present a significant problem that impairs competition in the wireless industry. However, with Verizon and AT&T fast and furiously deploying 4G LTE, lack of interoperability in the Lower 700 MHz band has become an urgent concern for competitive carriers. While it remains a concern, eliminating device exclusivity will mean little if devices are not interoperable. An interoperability solution for 4G LTE would substantially ameliorate the pending exclusivity issues. Accordingly, RCA hereby withdraws the pending petition without prejudice for the reasons explained below.

As RCA has pointed out in many contexts, the wireless sector is increasingly dominated by AT&T and Verizon, and the absence of competitive balance is a cause for serious concern. This duopoly gives AT&T and Verizon the ability and incentive to demand exclusive arrangements with device manufacturers, many of which have agreed to give those carriers exclusive access to the most sought-after devices. The result of such exclusivity arrangements is that the largest carriers have bottleneck control over a key input—devices—which impairs competition from small, midsize, and rural carriers. Exclusivity also forces consumers either to pay supra-competitive prices to the largest carriers or to accept less desirable devices. Even when exclusive devices later become available more broadly, the initial exclusivity period creates a significant first-mover advantage for these already-dominant carriers, further cementing their market power. Exclusivity arrangements also have a disproportionately harmful effect on rural consumers, because AT&T and Verizon, which control access to devices, do not serve thousands of rural communities.

¹ *In re Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-11497 (May 20, 2008).

Although device exclusivity continues to harm competition and impede the ability of wireless carriers to compete with AT&T and Verizon, RCA was encouraged by the Commission's recent decision to release a Notice of Proposed Rulemaking seeking comment on how to achieve interoperability in the Lower 700 MHz band. That proceeding offers a critical opportunity to promote wireless competition. Importantly, ensuring interoperability also will have a positive impact on the availability of cutting-edge devices that consumers demand and that competitive carriers require to compete effectively with the largest super-carriers, because the absence of interoperability has been a significant impediment (along with exclusivity) in smaller carriers' ability to obtain access to the latest handsets.

Because of the critical competitive importance of achieving interoperability in the Lower 700 MHz band, RCA believes that the Commission can most effectively advance a pro-competitive agenda by focusing at this time on its interoperability proceeding, while continuing to monitor developments relating to exclusivity arrangements. For that reason, RCA withdraws its petition for rulemaking in the above-captioned docket without prejudice.² RCA intends to assess the impact of the interoperability proceeding on its members' access to 4G handsets, and it will continue to monitor device availability in the wireless industry more broadly. If exclusivity arrangements continue to impede its members' ability to compete, RCA will be prepared to re-file its petition for rulemaking at an appropriate time based on updated marketplace information. In the meantime, RCA looks forward to working cooperatively with the Commission to make Lower 700 MHz interoperability a reality.

Sincerely,

/s/

Steven K. Berry
Rebecca Murphy Thompson
RCA—The Competitive Carriers Association

² Apple's openness to sell to carriers other than AT&T and Verizon and the fact that Android phones have developed largely without the exclusivity, proves that the threat of regulation has had some positive effect. While withdrawing at this time, the FCC should make clear that it has its eye on this issue.